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4 JAMES SPINGOLA,

5 Plaintiff,

6 v.

7 DEPUTY UJDAR, et al.,

8 Defendants.

9 Case No. 25-cv-00557-JSC10  
11 **ORDER OF SERVICE**12 **INTRODUCTION**13 Plaintiff, an inmate at the Alameda County Jail who is proceeding without representation  
14 by an attorney, filed this civil rights complaint under 42 U.S.C. § 1983 against two deputies in the  
15 Alameda County Sheriff's Department. Leave to proceed in forma pauperis is granted in a  
16 separate order. For the reasons discussed below, the complaint state claims capable of judicial  
17 determination and review, and the service is ordered upon Defendants.18 **STANDARD OF REVIEW**19 Federal courts must engage in a preliminary screening of cases in which prisoners seek  
20 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §  
21 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of  
22 the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief  
23 may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.*  
24 § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901  
25 F.2d 696, 699 (9th Cir. 1990).26 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the  
27 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the  
28 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon

1 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to  
2 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to  
3 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a  
4 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must  
5 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,  
6 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a  
7 claim for relief that is plausible on its face.” *Id.* at 570. To state a claim that is plausible on its  
8 face, a plaintiff must allege facts that “allow[] the court to draw the reasonable inference that the  
9 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
11 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
12 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.  
13 42, 48 (1988).

#### 14 **LEGAL CLAIMS**

15 Plaintiff alleges Defendants Deputy Ujdar and Deputy Balone (or Balane) severely beat  
16 him. (ECF No. 1 at 6.) Plaintiff received an order end his phone call with his family members.  
17 He stood up after hanging up and was speaking to an unidentified deputy when he was “pushed  
18 from behind.” (*Id.*) Deputy Ujdar “grabbed” his arm, and Plaintiff “pulled away.” (*Id.*)  
19 Defendants then “slammed” him into a table and to the ground, and they twisted his arms and legs  
20 “trying to break them.” (*Id.*) Plaintiff alleges he suffers from a disability that is visible when he  
21 walks. (*Id.* at 7.) He alleges he suffered injuries to his head, arms, and legs. (*Id.* at 9.)

22 When liberally construed, Plaintiff’s allegations state a claim capable of judicial  
23 determination against Defendants for using excessive force in violation of his constitutional rights.  
24 It is not clear from the complaint whether Plaintiff had been convicted of any charges at the time  
25 of Defendants’ alleged use of force. If he had been convicted, his claim falls under the Eighth  
26 Amendment; if not, his claim falls under the Fourteenth Amendment right to due process. *See*  
27 *Whitley v. Albers*, 475 U.S. 312, 319 (1986) (holding that after conviction, an inmate is protected  
28 under the Eighth Amendment from “unnecessary and wanton infliction of pain” by jail or prison

1 officials); *Graham v. Connor*, 490 U.S. 386, 395 n.10. (1989) (holding pretrial detainee protected  
2 from use of excessive force by Due Process Clause of Fourteenth Amendment).

### 3 CONCLUSION

4 For the reasons discussed above, the Court orders as follows:

5 1. The Clerk shall issue a summons and the United States Marshal shall serve, without  
6 prepayment of fees, the summons, a copy of the complaint with attachments, and a copy of this  
7 order on Deputy Ujdar and Deputy Balone (or Balane) at the Alameda County Jail.

8 The Clerk shall also mail a courtesy copy of the first amended complaint with all  
9 attachments and a copy of this order to the Alameda County Counsel's Office.

10 2. Defendants shall file an answer in accordance with the Federal Rules of Civil  
11 Procedure.

12 3. To expedite the resolution of this case:

13 a. No later than **91** days from the date this order is issued, Defendants shall file a  
14 motion for summary judgment or other dispositive motion. The motion shall be supported by  
15 adequate factual documentation and shall conform in all respects to Federal Rule of Civil  
16 Procedure 56, and shall include as exhibits all records and incident reports stemming from the  
17 events at issue. If Defendants are of the opinion that this case cannot be resolved by summary  
18 judgment, theys shall so inform the Court prior to the date the summary judgment motion is due.  
19 All papers filed with the Court shall be promptly served on Plaintiff.

20 b. At the time the dispositive motion is served, Defendants shall also serve, on a  
21 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th  
22 Cir. 1998) (en banc). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

23 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the  
24 Court and served upon Defendants no later than **28 days** from the date the motion is filed.  
25 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him  
26 pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

27 d. Defendants shall file a reply brief no later than **14** days after the opposition is  
28 filed.

e. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

4. All communications by Plaintiff with the Court must be served on Defendants or their counsel once counsel has been designated, by mailing a true copy of the document to Defendants or their counsel.

5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the parties may conduct discovery.

6. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address." He also must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Reasonable requests for an extension of a deadline will be allowed upon a showing of good cause if the request is filed prior to the deadline.

## IT IS SO ORDERED.

Dated: April 24, 2025

Jacqueline Scott Corley  
JACQUELINE SCOTT CORLEY  
United States District Judge

## **NOTICE -- WARNING (SUMMARY JUDGMENT)**

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact-- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.